WILLKIE

CLIENT ALERT

Roundup of NAIC Private Equity Developments

June 17, 2025

AUTHORS

Allison J. Tam | Maureen Kellett Curtiss | Nicole Zayac

This Client Alert provides an update to our previous reporting on the National Association of Insurance Commissioners (the "NAIC") "Regulatory Considerations Applicable (But Not Exclusive) to Private Equity Owned Insurers" (the "Considerations"). As background, a special report by the NAIC's Capital Markets Bureau found that there were 117 private equity-owned insurers with $487 billion in assets at year-end 2020.[1] The report also stated that the concentration of "nontraditional" bond investments, including asset-based securities and other structured securities such as collateralized loan obligations ("CLOs"), was higher for private equity-owned insurers compared to the overall U.S. insurance industry. In response, the NAIC developed the Considerations and adopted them, together with an associated work plan (the "Work Plan"), in August 2022.

The Considerations pertain to state insurance regulators' ability to effectively monitor the solvency of and assess risks faced by insurers, including in the areas of related party relationships, investments and reinsurance transactions. The NAIC has emphasized that most of the Considerations are not limited to private equity-owned insurers and are applicable to any insurers engaged in activities covered by the list.

---

[1] The Capital Markets Bureau has most recently reported that the number of private equity-owned insurers was 137 as of July 2024 with $605.7 billion in cash and invested assets.

The Work Plan highlighted relevant NAIC workstreams that were already underway and called for certain new initiatives to begin in response to the Considerations. The Macroprudential (E) Working Group ("MWG"), which oversees the Work Plan, last provided a formal update in August 2024, in which it reported that most of the Considerations are now considered complete or have significantly progressed. NAIC working groups have finalized even more actions since that report.

Now that the work of the NAIC is substantially complete on this initiative, below is a table setting forth the Considerations and a summary of the NAIC's actions in response to each. For more detail regarding these activities, please contact one of the attorneys listed below or an attorney with whom you regularly work.

	Topic	Text of Consideration	NAIC Response
1.	Structuring contracts in a holding company system	Regulators may not be obtaining clear pictures of risk due to holding companies structuring contractual agreements in a manner to avoid regulatory disclosures and requirements. Additionally, affiliated/related party agreements impacting the insurer's risks may be structured to avoid disclosure (for example, by not including the insurer as a party to the agreement).	• Adopted new guidance in the Financial Analysis Handbook (the "FAH") for regulatory review of Form A and disclaimer of control/affiliation filings. ○ For Form A applications, the guidance directs analysts to "carefully scrutinize" complex ownership structures by reviewing ownership documents and agreements to understand the terms of the proposed structure, each parties' rights and responsibilities, who has decision-making authority and who controls the insurer. The guidance also includes suggestions for post-closing monitoring and considerations for non-U.S. acquiring parties, such as the impact of international accounting standards and coordination with other jurisdictions. ○ For disclaimer of control/affiliation filings, the guidance highlights situations where a disclaiming party may control the insurer such as contracts that convey elements of control, and notes that the burden of proof is on the applicant to demonstrate that they do not have control or affiliation. It also suggests follow-up inquiries for analysts to make of applicants and post-disclaimer stipulations to ensure that the facts underlying the disclaimer do not change without further regulatory review.

	Topic	Text of Consideration	NAIC Response
2.	Control	Control [under the insurance laws] is presumed to exist where ownership is >=10%, but control and conflict of interest considerations may exist with less than 10% ownership. For example, a party may exercise a controlling influence over an insurer through Board and management representation or contractual arrangements, including non-customary minority shareholder rights or covenants, investment management agreement (“IMA”) provisions such as onerous or costly IMA termination provisions, or excessive control or discretion given over the investment strategy and its implementation. Asset-management services may need to be distinguished from ownership when assessing and considering controls and conflicts.	• The adopted FAH guidance referenced above is intended to address this Consideration as well as Consideration 1. In particular, it notes that agreements “may convey control through unique share classes and voting rights, or through certain management or operational agreements that delegate decision making and control,” and emphasizes the importance of identifying the ultimate controlling person at the top of the organizational structure by “trac[ing] the ownership/control to the top person/entity.” • The NAIC has also adopted new handbook guidance for the review of affiliated IMAs (see Consideration 3 below) and statutory accounting guidance for related party transactions (see Consideration 7 below).
3.	Investment management agreements	The material terms of the IMA and whether they are arm’s-length or include conflicts of interest—including the amount and types of investment management fees paid by the insurer, the termination provisions (how difficult or costly it would be for the insurer to terminate the IMA) and the degree of discretion or control of the investment manager over investment guidelines, allocation, and decisions.	• Adopted new guidance in the FAH and the Financial Condition Examiners Handbook (the “FCEH”) for review and monitoring of affiliated services agreements generally. ○ Per the guidance, in connection with a Form D filing for an affiliated service agreement, an insurer should submit evidence that the pricing of the agreement satisfies the “fair and reasonable” standard by demonstrating comparable market rates or adequate rationale and documentation supporting a “cost-plus” arrangement. The insurer’s representations in the Form D are subject to verification and correction upon examination of the insurer. • Adopted additional guidance in the FAH and FCEH specific to IMAs.

<table>
<tr><th></th><th>Topic</th><th>Text of Consideration</th><th>NAIC Response</th></tr>
<tr><td></td><td></td><td></td><td><li style="list-style:none">
Per the FAH, when reviewing a Form D for an affiliated IMA, regulators should consider whether specified elements are appropriately included in the agreement, including with respect to selection of investments, authority for transactions, conflicts of interest, fiduciary responsibility, fees, sub-advisors, reporting and review of performance, and termination provisions.
Per the FCEH, regulators should also assess these aspects of an insurer’s investment management arrangements (affiliated or non-affiliated) when conducting examinations of the insurer.</td></tr>
<tr><td>4.</td><td>Asset-liability matching</td><td>Owners of insurers, regardless of type and structure, may be focused on short-term results which may not be in alignment with the long-term nature of liabilities in life products. For example, investment management fees, when not fair and reasonable, paid to an affiliate of the owner of an insurer may effectively act as a form of unauthorized dividend in addition to reducing the insurer’s overall investment returns. Similarly, owners of insurers may not be willing to transfer capital to a troubled insurer.</td><td>Adopted a new actuarial guideline for asset adequacy testing (Actuarial Guideline LIII—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves or “AG 53”), which became effective for year-end 2022.
AG 53 requires life insurers that meet certain size criteria to submit information related to complex assets that support their business to help regulators evaluate the company’s reserve adequacy and claims-paying ability in moderately adverse conditions.
Adopted new guidance in the FAH for regulators reviewing surplus notes to confirm that the application includes all information required under state law and complies with statutory accounting rules, has a market-rate interest rate, and that the insurer’s financial condition supports the application.</td></tr>
</table>

	Topic	Text of Consideration	NAIC Response
			• Adopted new guidance in the FAH for regulators reviewing capital maintenance agreements, stating that the regulator should evaluate the financial stability of the parent holding company to determine if it is adequately capitalized to maintain the insurer's capital.
5.	Operational oversight	Operational, governance and market conduct practices being impacted by the different priorities and level of insurance experience possessed by entrants into the insurance market without prior insurance experience, including, but not limited to, [private equity] owners. For example, a reliance on TPAs due to the acquiring firm's lack of expertise may not be sufficient to administer the business. Such practices could lead to lapse, early surrender, and/or exchanges of contracts with in-the-money guarantees and other important policyholder coverage and benefits.	• The MWG has indicated that it may consider in the future creating additional guidance for Form A review and financial examinations with respect to this Consideration. • We note that the FAH guidance adopted in response to Consideration 1, above, directs analysts reviewing Form A applications to "review rating agency reports and public news sources to identify and assess comments or concerns [that] have been expressed regarding the acquiring entity (or group)."
6.	Definition of private equity	No uniform or widely accepted definition of [private equity] and challenges in maintaining a complete list of insurers' material relationships with [private equity] firms.	• Agreed that no action will be taken since the focus of regulators should be on activities and not specific types of owners.
7.	Related party investments	The lack of identification of related party-originated investments (including structured securities). This may create potential conflicts of interests and excessive and/or hidden fees in the portfolio structure, as assets created and managed by affiliates may include fees at different levels of the value chain. For example, a CLO which is managed or structured by a related party.	• Adopted new reporting requirements in Statement of Statutory Accounting Principles ("SSAP") Nos. 25 and 43 that clarify the definition of control for SSAP purposes and create new financial statement reporting requirements for investment transactions with related parties. ○ The revisions clarified that for purposes of identifying related party arrangements subject to the reporting requirements, control of an entity may be found through arrangements other than voting interests and without regard to whether there is a disclaimer of control on file.

	Topic	Text of Consideration	NAIC Response
			○ Under corresponding changes to the financial statement blanks, related party transactions are reported using new reporting codes that identify the role of the related party. • As noted with respect to Consideration 3, the new FAH and FCEH guidance related to IMAs includes conflict of interest and avoiding duplicative management fees as areas for regulator focus.
8.	Affiliate investments within structured securities	Though the blanks include affiliated investment disclosures, it is not easy to identify underlying affiliated investments and/or collateral within structured security investments. Additionally, transactions may be excluded from affiliated reporting due to nuanced technicalities. Regulatory disclosures may be required to identify underlying related party investments and/or collateral within structured security investments. This would include, for example, loans in a CLO issued by a corporation owned by a related party.	• Adopted new guidance in the FCEH to help examiners evaluate whether insurers are in compliance with the related party investment reporting requirements (see Consideration 7) and AG 53 standards (see Consideration 4).
9.	Disclaimers of affiliation	Broader considerations exist around asset manager affiliates (not just [private equity] owners) and disclaimers of affiliation avoiding current affiliate investment disclosures.	• Adopted new Schedule Y, Part 3 to insurer financial statements requiring the filer to "[p]rovide the name of all owners . . . with an ownership percentage greater than 10%," regardless of whether the owner has a disclaimer of control on file. Although the instructions do not specify, we believe that the context suggests that 10% refers to direct or indirect ownership of voting securities, consistent with the typical definition of control in the insurance holding company act.

	Topic	Text of Consideration	NAIC Response
10.	Increased risk from certain investments	The material increases in privately structured securities (both by affiliated and non-affiliated asset managers), which introduce other sources of risk or increase traditional credit risk, such as complexity risk and illiquidity risk, and involve a lack of transparency.	• Adopted significant revisions to SSAPs as a result of the "Bond Project" to clarify what investments may be reported as a bond on an insurer's financial statements, culminating in implementation of a "principles-based" bond definition in SSAP No. 26 that considers the substance, rather than the legal form, of the instrument. • Adopted revisions to the Purposes and Procedures Manual of the NAIC Investment Analysis Office (the "P&P Manual") to authorize the Securities Valuation Office ("SVO") to financially model CLO investments. • Adopted interim 45% risk-based capital ("RBC") factor for residual tranches of structured security investments. • Evaluating the RBC treatment of all tranches of structured securities, with an initial focus on CLO investments. • A new commissioner-level task force, the RBC Model Governance (EX) Task Force, will oversee an analysis to identify gaps in the existing RBC framework and guiding principles for future RBC adjustments.
11.	Reliance on ratings	The level of reliance on rating agency ratings and their appropriateness for regulatory purposes (e.g., accuracy, consistency, comparability, applicability, interchangeability, and transparency).	• Adopted revisions to the P&P Manual to provide a review process when the SVO believes a credit rating is not an accurate reflection of a security's risk. • Adopted revisions to the P&P Manual requiring submission of rationale reports for filing exempt securities. • Developing a due diligence framework for the use of credit rating providers in evaluating investment risk (part of NAIC "holistic review" of the regulatory framework for insurance company investments).

	Topic	Text of Consideration	NAIC Response
12.	Pension risk transfer (“PRT”) risks	The trend of life insurers in [PRT] business and supporting such business with the more complex investments outlined above.	• Monitoring impact of changes to the Life RBC formula related to longevity risk transfer business and SSAP modifications to the reporting of PRT transactions (each adopted in 2021). • Life Actuarial (A) Task Force (“LATF”) may consider developing PRT/longevity risk mortality factors.
13.	Offshore reinsurers	Insurers’ use of offshore reinsurers (including captives) and complex affiliated sidecar vehicles to maximize capital efficiency, reduce reserves, increase investment risk, and introduce complexities into the group structure.	• Adopted Reinsurance Comparison Worksheet tool for regulators to request information from reinsurance parties in order to understand the impacts of a reinsurance transaction. • LATF has adopted a new actuarial guideline for reinsurance asset adequacy testing (“AAT”) for life insurers. The new AAT guideline will require AAT using a cash flow testing methodology for certain reinsurance transactions within the scope of the guideline involving long duration, asset-intensive insurance business. It is expected to be considered for final adoption by the NAIC’s Executive and Plenary in August 2025, with the first reports under the guideline due on April 1, 2026. • The MWG’s announced work plan for 2025 includes “reviewing the use of sidecars in the life insurance sector, the creation of a reinsurance dashboard, retrocessions and reinsurance recapture provisions.”

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Allison J. Tam	Maureen Kellett Curtiss	Nicole Zayac
212 728 8282	212 728 8902	415 858 7443
atam@willkie.com	mcurtiss@willkie.com	nzayac@willkie.com

WILLKIE

BRUSSELS CHICAGO DALLAS FRANKFURT HOUSTON LONDON LOS ANGELES MILAN
MUNICH NEW YORK PALO ALTO PARIS ROME SAN FRANCISCO WASHINGTON